

HOUSE BILL No. 1396

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-13-3-3.

Synopsis: Liability for inadequate drainage. Imposes liability on a governmental entity or an employee of a governmental entity for a loss that results from gross negligence, willful or wanton misconduct, or intentional misconduct in failing to provide adequate drainage from industrial or commercial sites.

Effective: July 1, 2007.

Ruppel

January 16, 2007, read first time and referred to Committee on Agriculture and Rural Development.

C
o
p
y



Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1396

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-13-3-3, AS AMENDED BY P.L.47-2006,
2 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 3. (a) **Except as provided in subsection (b)**, a
4 governmental entity or an employee acting within the scope of the
5 employee's employment is not liable if a loss results from the
6 following:
7 (1) The natural condition of unimproved property.
8 (2) The condition of a reservoir, dam, canal, conduit, drain, or
9 similar structure when used by a person for a purpose that is not
10 foreseeable.
11 (3) The temporary condition of a public thoroughfare or extreme
12 sport area that results from weather.
13 (4) The condition of an unpaved road, trail, or footpath, the
14 purpose of which is to provide access to a recreation or scenic
15 area.
16 (5) The design, construction, control, operation, or normal
17 condition of an extreme sport area, if all entrances to the extreme



C
o
p
y

1 sport area are marked with:

2 (A) a set of rules governing the use of the extreme sport area;

3 (B) a warning concerning the hazards and dangers associated
4 with the use of the extreme sport area; and

5 (C) a statement that the extreme sport area may be used only
6 by persons operating extreme sport equipment.

7 This subdivision shall not be construed to relieve a governmental
8 entity from liability for the continuing duty to maintain extreme
9 sports areas in a reasonably safe condition.

10 (6) The initiation of a judicial or an administrative proceeding.

11 (7) The performance of a discretionary function; however, the
12 provision of medical or optical care as provided in IC 34-6-2-38
13 shall be considered as a ministerial act.

14 (8) The adoption and enforcement of or failure to adopt or enforce
15 a law (including rules and regulations), unless the act of
16 enforcement constitutes false arrest or false imprisonment.

17 (9) An act or omission performed in good faith and without
18 malice under the apparent authority of a statute which is invalid
19 if the employee would not have been liable had the statute been
20 valid.

21 (10) The act or omission of anyone other than the governmental
22 entity or the governmental entity's employee.

23 (11) The issuance, denial, suspension, or revocation of, or failure
24 or refusal to issue, deny, suspend, or revoke any permit, license,
25 certificate, approval, order, or similar authorization, where the
26 authority is discretionary under the law.

27 (12) Failure to make an inspection, or making an inadequate or
28 negligent inspection, of any property, other than the property of
29 a governmental entity, to determine whether the property
30 complied with or violates any law or contains a hazard to health
31 or safety.

32 (13) Entry upon any property where the entry is expressly or
33 impliedly authorized by law.

34 (14) Misrepresentation if unintentional.

35 (15) Theft by another person of money in the employee's official
36 custody, unless the loss was sustained because of the employee's
37 own negligent or wrongful act or omission.

38 (16) Injury to the property of a person under the jurisdiction and
39 control of the department of correction if the person has not
40 exhausted the administrative remedies and procedures provided
41 by section 7 of this chapter.

42 (17) Injury to the person or property of a person under supervision

C
o
p
y



of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, a pretrial conditional release program under IC 35-33-8, or a community corrections program under IC 11-12.

(18) Design of a highway (as defined in IC 9-13-2-73), toll road project (as defined in IC 8-15-2-4(4)), tollway (as defined in IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the claimed loss occurs at least twenty (20) years after the public highway, toll road project, tollway, or project was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-33-8-7(b).

(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

(A) a computer;

(B) an information system; or

(C) equipment using microchips;

that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, this subdivision expires June 30, 2003.

(22) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the

**C
o
p
y**



enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

(23) An act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield (as defined in IC 13-11-2-19.3) unless:

(A) the loss is a result of reckless conduct; or

(B) the governmental entity was responsible for the initial placement of the hazardous substances, petroleum, or other pollutants on the brownfield.

(b) A governmental entity or an employee of a governmental entity acting within the scope of the employee's employment is liable for a loss resulting from the runoff or discharge of liquids:

(1) from real property that is:

(A) located within the boundaries of the governmental entity;

(B) owned by a person other than the person incurring the loss; and

(C) used for an industrial or a commercial purpose; and

(2) onto the surface of a road, a street, an alley, or another public way;

if the failure of the governmental entity or employee to provide adequate drainage for the liquids constitutes gross negligence, willful or wanton misconduct, or intentional misconduct.

SECTION 2. [EFFECTIVE JULY 1, 2007] IC 34-13-3-3, as amended by this act, applies only to causes of action arising after June 30, 2007.

**C
o
p
y**

